

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KARL W. SUHSEN,

Plaintiff,

v.

OPINION and ORDER

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

20-cv-519-jdp

Defendant.¹

Barry A. Schultz, counsel for plaintiff Karl Suhsen, moves under 42 U.S.C. § 406(b) for a fee award of \$59,623.03. Dkt. 44. Suhsen was awarded \$262,492.00 in past-due benefits for himself and his auxiliary dependent children. Dkt. 44-2. The Social Security Administration had withheld \$65,623.02 for attorney fees and paid counsel \$6,000 in administrative fees. The requested amount, which represents 25 percent of Suhsen's past-due benefits offset by the administrative fees counsel already received, falls within the amount allowed by statute and the parties' fee agreement. Dkt. 44-4. Schultz also says that he will refund Suhsen the \$10,450.37 in fees that he was previously awarded under the Equal Access to Justice Act (EAJA) if he receives the fee he requests. The Commissioner does not oppose counsel's fee request. Dkt. 45.

The total amount of time that counsel's firm spent on this case for proceedings in this court was 51.6 hours of attorney time, resulting in a proposed effective rate of \$1,155 per hour. Dkt. 44-5. The rate is on the high end, but the court has approved similar rates under § 406(b) for comparable work and results. *See, e.g., Contreras v. Kijakazi*, No. 19-cv-669-jdp, 2023 WL

¹ The court has updated the caption in accordance with Federal Rule of Civil Procedure 25(d).

3496236 (W.D. Wis. May 17, 2023) (awarding fees at an hourly rate of \$1,000–\$1,200); *Evans v. Berryhill*, No. 12-cv-888-jdp, 2018 WL 835172 (W.D. Wis. Feb. 13, 2018) (awarding fees at implied hourly rate of \$1,000); *Pazour v. Saul*, 16-cv-20-wmc, dkt. 22 (same); *Heise v. Colvin*, 14-cv-739-jdp dkt. 35 (awarding fees at implied hourly rate of \$1,100 for attorney time). Counsel’s requested fee is within bounds of what is reasonable in light of counsel’s risk of non-recovery, the work performed, the results obtained, and the amounts awarded in similar cases.

The court will grant counsel’s motion. As counsel states, this award requires him to return the \$10,450.37 he received in EAJA fees to Suhsen. If an attorney receives fees for the same work under both § 406(b) and the EAJA, the attorney must return the smaller fee to the plaintiff. *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

ORDER

IT IS ORDERED that Barry A. Schultz’s motion for attorney fees under 42 U.S.C. § 406(b), Dkt. 44, is GRANTED. The court approves the representative fee award of \$59,623.03, provided that Schultz refunds Suhsen \$10,450.37.

Entered May 25, 2023.

BY THE COURT:

/s/
JAMES D. PETERSON
District Judge